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7 FREECYCLESUNNYVALE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

12
13 FREECYCLESUNNYVALE,
a California unincorporated association.

14 Plaintiff,

V.

16 THE FREECYCLE NETWORK,
an Arizona corporation,

Defendant.

CASE NO. C06-00324 CW

SUPPLEMENTAL JOINT CASE MANAGEMENT STATEMENT

19 THE FREECYCLE NETWORK, INC., an
Arizona Corporation,

Counterclaimant,

V.

22
23 FREECYCLESUNNYVALE, a California
unincorporated association.

Counterdefendant.

1 FreecycleSunnyvale (“Sunnyvale”) and The Freecycle Network, Inc., (“The Freecycle
2 Network”) jointly submit this Supplemental Joint Case Management Statement pursuant to this
3 Court’s Scheduling Order issued January 22, 2008, which set a Case Management Conference for
4 March 13, 2008.

5 **I. RECENT CASE DEVELOPMENTS**

6 This case arises from The Freecycle Network’s claim that it has trademark rights in the
7 word FREECYCLE and a stylized logo depicting that word. Sunnyvale filed declaratory relief
8 action for a declaration of non-infringement or, in the alternatives, a declaration that The
9 Freecycle Network’s purported marks are generic or that The Freecycle Network engaged in
10 naked licensing. The Freecycle Network filed counterclaims, alleging trademark infringement,
11 contributory infringement, and unfair competition under the Lanham Act, as well as California
12 state-law claims for unfair competition. Counsel for both parties appear *pro bono*.

13 A related action by The Freecycle Network against Tim Oey, one of the principals for
14 Sunnyvale, is pending in the U.S. District Court for the District of Arizona. In the Arizona action,
15 The Freecycle Network brought trademark infringement and Arizona law unfair competition
16 claims against Mr. Oey, based at least in part on his use of the word FREECYCLE in a generic
17 sense and his recommendations that others do so as well. The Arizona court entered a preliminary
18 injunction against Mr. Oey, forbidding him from using FREECYCLE generically or encouraging
19 others to use it generically. Mr. Oey appealed this injunction to the Ninth Circuit.

20 On July 19, 2007, Sunnyvale filed a motion for summary judgment that The Freecycle
21 Network had engaged in naked licensing. Before Sunnyvale’s motion was heard, the Ninth
22 Circuit entered a decision in the Arizona case, holding definitively that there is no cause of action
23 under the Lanham Act for using a word generically. The Court, on September 27, 2007, heard
24 argument on Sunnyvale’s motion and requested a supplemental motion, to be decided without
25 oral argument, to address the impact of the Ninth Circuit’s ruling on this case and its implications
26 on Sunnyvale’s standing to pursue this action further. Sunnyvale filed that supplemental motion
27 on October 25; The Freecycle Network’s opposition and Sunnyvale’s reply followed in the
28 normal course.

1 The parties are presently awaiting the Court's decision on Sunnyvale's motions, which
2 will determine the future trajectory of this case.

3 **II. PROPOSALS FOR FUTURE CASE DEVELOPMENTS**

4 **Sunnyvale:** The parties are awaiting an order on Sunnyvale's motions, which are under
5 submission. Once the order is entered, the parties can address any issues that remain.

6 **The Freecycle Network:** The Freecycle Network has made different several proposals
7 regarding possible ways to resolve this dispute, but has not received a response from counsel for
8 Sunnyvale.

9 Dated: February 20, 2008

10 MAYER, BROWN LLP
11 IAN N. FEINBERG
12 ERIC B. EVANS

13 By: /s/ Ian N. Feinberg
14 Ian N. Feinberg

15 Attorneys for Plaintiff and Counterdefendant
16 FREECYCLESUNNYVALE

17 Dated: February 20, 2008

18 KING & SPALDING LLP
19 LISA KOBIALKA

20 By: /s/ Lisa Kobialka
21 Lisa Kobialka

22 Attorneys for Defendant and Counterclaimant
23 THE FREECYCLE NETWORK, INC.

24 *Filer's Attestation: Pursuant to General Order No. 45, Section X(B), the filer hereby attests that
25 the signatories' concurrence in the filing of this document has been obtained.*